

Banking *Traditions*

The Magazine of the Community Bankers Association of Alabama

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UNIMPEDED BRANCHING POWER?

The Expansion of Interstate De Novo Bank Branching

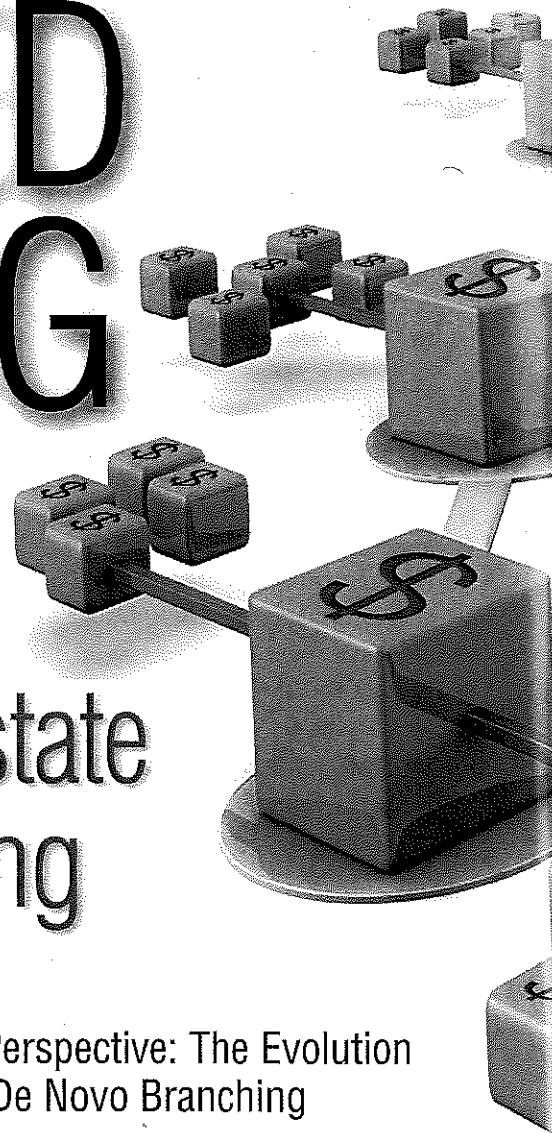
By Debra Taylor Lewis and Daniel R. Hugunine

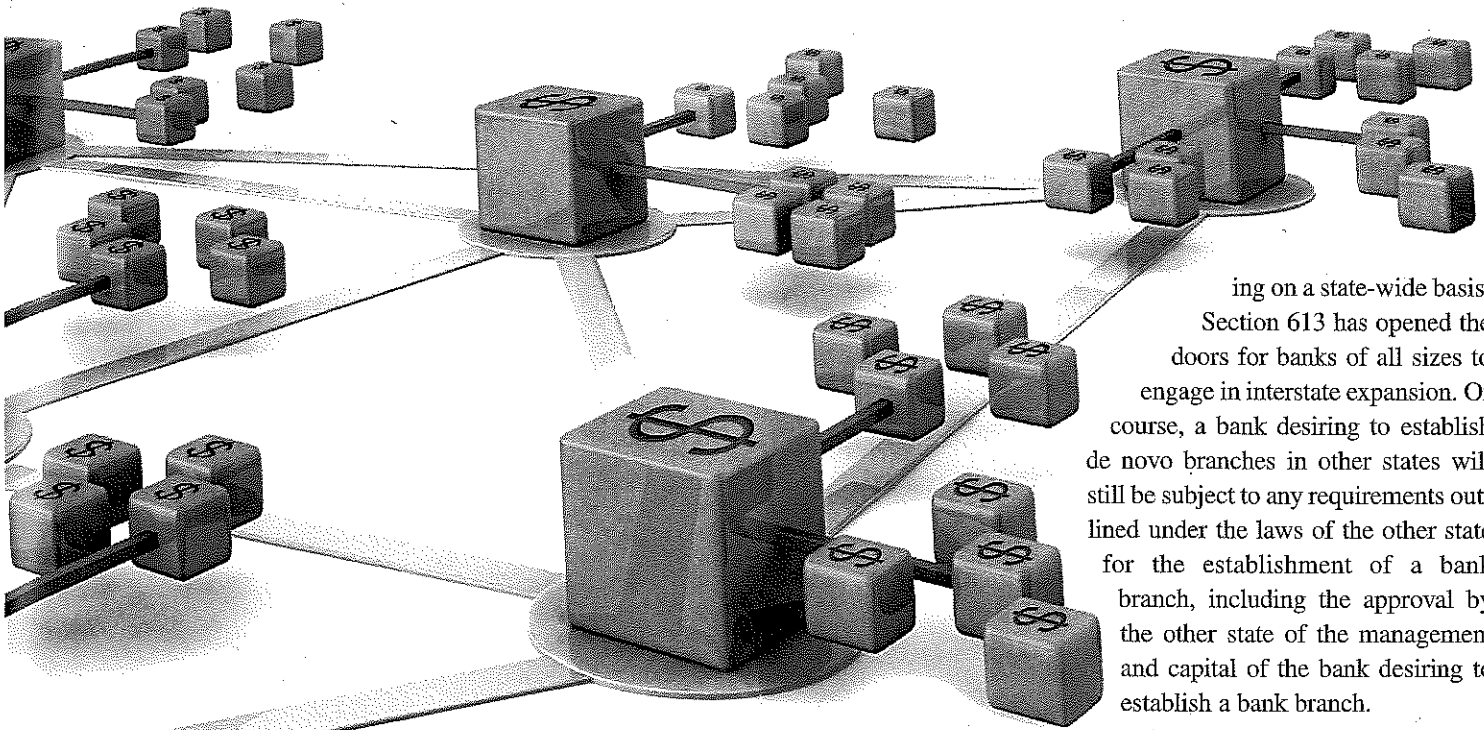
On July 21, 2010, with a stroke of his pen, President Obama changed the regulatory landscape for banks and other financial institutions by enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). While largely unnoticed, Section 613 of the Dodd-Frank Act removed the final legal obstacle effectively barring banks from opening de novo branches in other states — i.e., interstate de novo branching.

A Historical Perspective: The Evolution of Interstate De Novo Branching

Historically, U.S. banking laws have effectively prohibited banks from engaging in interstate de novo branching. In fact, banks could only expand across state lines by chartering a subsidiary in another state or acquiring an out-of-state bank to convert to a subsidiary of the parent bank. It was not until the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "IBBEA") that banks could effectively operate branches across state lines. While a small number of states allowed interstate branching prior to passage of the IBBEA, almost no interstate branching occurred prior to passage of the IBBEA.

Under the IBBEA, a bank was allowed to establish and operate a de novo branch in a state other than the bank's home state (e.g., the state by which a state bank is chartered) ("Home State") if the state in which the bank desired to establish a de novo branch ("Host State") had a law that expressly permitted all out-of-state banks to establish de novo branches. In short, only if the Host State "opted in" to the interstate branching provision of the IBBEA by passing a law expressly permitting interstate de novo branching, would interstate de novo branching into the Host State be permissible. While the IBBEA ushered in a new era of interstate de novo branching, it also





ing on a state-wide basis, Section 613 has opened the doors for banks of all sizes to engage in interstate expansion. Of course, a bank desiring to establish de novo branches in other states will still be subject to any requirements outlined under the laws of the other state for the establishment of a bank branch, including the approval by the other state of the management and capital of the bank desiring to establish a bank branch.

permitted states to impose anti-competitive barriers to interstate branching. Many states, like Alabama, opted in, but imposed a reciprocity requirement. That is, Alabama would only allow interstate de novo branching by an out-of-state bank if the laws of the Home State for that out-of-state bank were reciprocal in permitting interstate de novo branching for banks organized outside of its own borders. For example, of Alabama's neighboring states, only Tennessee permits interstate de novo branching and, like Alabama, Tennessee only permits such branching if the Home State of the bank desiring to open a de novo branch in Tennessee has a reciprocal law permitting interstate de novo branching.

The Expansion of Interstate De Novo Branches

Section 613 of the Dodd-Frank Act amends the interstate branching provisions of the IBBEA by expanding the authority of banks to establish and operate de novo branches on an interstate basis regardless of state laws. These amendments allow a bank to open a de novo branch in any state if that state would permit a bank organized in that state to open the branch. In short, Section 613 eliminates the required "opt-in" election that existed under the IBBEA as well as other anti-competitive barriers imposed by some states (e.g., reciprocity), making existing state laws relating to interstate de novo branching moot and subject to revision. For example, as a result of Section 613, the Arkansas State Bank Department stated that all provisions of the Arkansas Banking Code restricting de novo interstate branching are now preempted ("Arkansas state chartered-banks are now free to branch into other states, as out-of-state banks are now free to branch into Arkansas."). As most states permit intrastate branch-

The Potential Impact of Section 613

While Section 613 creates substantial opportunities for banks to expand, these newfound opportunities come with potential implications:

- ▶ Just as you may be able to more freely establish a de novo branch across state lines, so can your competitors.
- ▶ In contrast to entry into a market via acquisition of an existing branch, de novo branching is generally less costly and has an immediate impact on market concentration, increasing the number of branches in the market.
- ▶ A significant legal barrier to de novo interstate branching no longer exists, so community, regional and national banks will now be able to cross states lines with much more ease.

From a consumer perspective:

- ▶ More extensive branching should result in better banking services for households and small businesses as a wider branch network leads to convenience in the form of greater access to bank services. For example, banks that lie near state borders would be better able to serve customers that frequently cross state lines, whether for work or pleasure.
- ▶ As branch coverage increases, communities that were previously unserved or underserved will now be able to access a wider array of bank services. In many markets, especially underserved markets, more extensive branching is likely to result in lower interest rates on loans and higher interest rates on deposits. ■



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